



# **Seabird Island Election Code**

-In Accordance with-

Conversion to Community Election System

Dated for Reference: June 15, 2016

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## **PREAMBLE**

Whereas Seabird Island requires an Election Code to:

- a) regulate how voters, candidates, and people acting on the behalf of the candidates are to conduct themselves before, during and after an election; and
- b) provide formal rules by which the Members elect individuals to hold the public office of Chief or Council;

Whereas the Council of Seabird Island desires to establish an Election Code, which follows the basic principles of natural justice to provide fairness, and impartiality, for the election of the Chief and Council for the good government of Seabird Island under its elections rules;

Whereas the Council of Seabird Island is empowered to make such an Election Code once it has been ratified by the Members; and

Whereas Seabird Island takes control of its elections so that it may conduct its elections under its community election system;

Now, therefore, the Council of Seabird Island hereby passes the following Election Code.

Upon the date of this Election Code coming into force, the following provisions found in the Indian Act, R.S.C. 1985, c. I-5, and its predecessor, the Indian Act, R.S.C. 1970, c. I-6, respecting the Band Elections of Chiefs and Band Councils, being Sections 74, 75, 76, 77, 78, and 79 inclusive, do not and shall not apply to Seabird Island.

## **PART 1 – PRELIMINARY MATTERS**

### **1. Title**

- 1.1 The title of this enactment is the Seabird Island Election Code

### **2. Principles**

- 2.1 The Election Code shall be interpreted in accordance with the principles set out in this article 2.
- 2.2 Nothing in this Election Code is intended to or does abrogate or derogate from any aboriginal, treaty or other rights and freedoms that pertain now or in the future to Seabird Island or Members.
- 2.3 Nothing in this Election Code is intended to or does abrogate the fiduciary relationship between Canada and Seabird Island and Canada and Seabird Island Members.



### 3. Definitions

#### 3.1 In this Election Code:

- (a) “Accelerated Election” means a by-election conducted in a shortened time frame as described to in Section 41;
- (b) “Active employee or contractor” means someone who is able to perform all the usual and customary duties of the individual’s employment on the individual’s regular work schedule or work contract. (E.g. someone not on a leave of absence or not under contract);
- (c) “Appellant” means an individual who submits an appeal in accordance with this Code with respect to the election;
- (d) “Appeal” means a written application to an appointed Appeal Board for a decision regarding an appealable election infraction.
- (e) “Appeal Board” means the Board established under this Code whose duty it is to act in appeals under the Code;
- (f) “Band” means Seabird Island;
- (g) “Band Council” or “Council” means the elected body of Seabird Island, and includes the Chief;
- (h) “Band Member” or “Member” means a person registered on the Membership list for Seabird Island, pursuant to the Seabird Island Membership Code;
- (i) “By-Election” means an election held for the purpose of filling a vacant Council position other than through a General Council Election;
- (j) “Business Day” means any working day except a Saturday, Sunday or statutory holiday;
- (k) “Candidate” means an eligible person who was nominated according to the requirements set out in this Code and fulfilled all other requirements for candidacy set out here;
- (l) “Chief” means the elected leader for Seabird Island;
- (m) “Clear Days” means a series of days exclusive of the first and exclusive of the last day;

- (n) "Code" means the Seabird Island Election Code and the leadership selection system set out herein;
- (o) "Code of Conduct" means the guidelines, general rules of behaviour and standards established in accordance with Sections of this Code, which govern the conduct of candidates running for office and their supporters relating to their participation in the electoral process;
- (p) "Corrupt Practice" means a malicious or fraudulent intention to evade requirements or to violate the Code or an act of an individual to procure some benefit for himself/herself or another person contrary to the duty and rights of others as outlined in this Code;

Corrupt Practices includes but are not limited to:

- i. impersonation, defined as pretending to be another person (whether living, dead or fictitious) in order to vote in their name;
  - ii. applying for a Mail-In Ballot in the name of another person, or diverting the delivery of a Mail-In Ballot form;
  - iii. giving false information in the papers nominating a candidate;
  - iv. bribing or attempting to bribe or illegally influence voters, including but not limited to, giving or offering food, drink or entertainment to a voter in order to influence their vote;
  - v. exerting undue influence on a voter through threats (including threats of "spiritual injury" as well as physical injury, damage or harm), whether to influence their vote or as a result of their voting;
  - vi. violates this code, Council's Oath of Office or Code of Ethics;
  - vii. fails to maintain a standard of conduct expected of a Member of Council;
  - viii. abuses his office such that the conduct negatively affects the dignity and integrity of the community or council;
  - ix. encourages others to commit any of the above acts or omissions; or
  - x. engages in such other conduct as may be determined by Council to be of such a serious nature that the removal is necessary and appropriate.
- (q) "Council Resolution" means a record of decisions or wishes of council, and

includes routine administrative and management matters.

- (r) "Debt" means monies that are owed to Seabird Island for goods and services provided to Members who deliberately refuse to pay for them. Example - rental arrears, loan non-payment, day-care arrears, dental care, employee loans, eye glasses, etc.
- (s) "Deputy Electoral Officer" means a qualified person appointed by Council to assist the Electoral Officer in the election process and assume duties if the Electoral Officer cannot continue.
- (t) "Disqualified" means to deprive somebody of a legal or other right or privilege to vote, be it a voter, candidate or elected official (Section 39 Penalties).
- (u) "Election" means either a General Council Election or a By-election of the Band held pursuant to the provisions of this Code.
- (v) "Election Day" is the last day on which a Poll may be taken in connection with any election.
- (w) "Electoral Officer" means the person appointed or selected in accordance with the procedures set out in this Election Code to carry out and oversee election processes.
- (x) "Election Proceedings" means the process by which candidates are nominated, electors cast their ballots, and votes are counted.
- (y) "Electors" or "Voters" means all those individuals on the Seabird Island's Membership List who have reached the age of eighteen (18) on Election Day and who have not been disqualified from voting.
- (z) "Gross Misconduct" means theft or falsification of records, wilful destruction of Seabird Island's property, or endangering the safety of any Seabird Island employee, client or Member through incompetence or negligence of a Council Member. Misconduct in the workplace generally falls into two categories. Minor misconduct is seen as unacceptable but is not a criminal offense (e.g. being late). Gross misconduct can lead to removal, (e.g. stealing or sexual harassment).
- (aa) "Inducement" means money, gift, valuable consideration, refreshment, entertainment, office placement, employment and any other benefit of any kind.
- (bb) "Ineligibility List" means a list of names of individuals who are disqualified from voting and only used by the Electoral Officer. The list will contain their surname, given name and alias if any. This list should show the names of all ineligible

electors in alphabetical order and not include any personal information about an elector such as date of birth, Band or registration number, or personal address or any other identifying information. The list is prepared by the Seabird Island Membership Clerk.

- (cc) "Intimidation" means to do or threaten to do any of the following: use force, violence or restraint against a person; inflict injury, harm, damage or loss to a person or property; otherwise intimidate a person.
- (dd) "Mail-In Ballot" means a ballot mailed or delivered in accordance with Section 25 of this Code.
- (ee) "Malfeasance" means an act carried out by a public official that cannot be legally justified or that conflict with the law. The performance by a public official, of an act that is legally unjustified, harmful, or contrary to law; wrongdoing (used especially of an act in violation of public trust).
- (ff) "Master Voters List" means a list of names of individuals who are qualified to vote and only used by the Electoral Officer. The list contains the elector's surname, given name, alias, Band number, date of birth, and also includes the addresses of off-reserve voters.
- (gg) "Membership Clerk" means the Band employee responsible for maintaining the Band's Membership list. Membership Clerk will help with the identification of eligible voters on Election Day and keeps a copy of the election results.
- (hh) "Nomination Period" means the period of time in which persons must submit their nomination papers in.
- (ii) "Nominator" means the person nominating a candidate who must be an eligible registered voter of Seabird Island.
- (jj) "Oath" means a solemn affirmation.
- (kk) "Poll" means election or the casting and recording of votes in accordance with this Election Code.
- (ll) "Polling Booth" means an area where electors mark their ballot that is arranged in such a manner that the elector is screened from observation by others.
- (mm) "Quorum" means the majority of the whole of Council. The quorum for the Seabird Island Council will be a majority of Council, who currently hold office. Should vacancies occur on Council, then the quorum will be based on the number of Councillors left and not what it was, if there were no vacancies. A



majority is a subset of a set consisting of more than half of the set's elements

- (nn) "Recall" means to allow voters to petition to remove the Chief or a Councillor from office between elections.
- (oo) "Scrutineer" means the person who is appointed by a candidate and confirmed by the Electoral Officer to observe the voting and counting proceedings at the election.
- (pp) "Security Guard" means a person(s) employed by Seabird Island to maintain order and peace during an election poll.
- (qq) "Voter Declaration Form" means a document that sets out, or provides for:
  - i. the name of an elector,
  - ii. the Band Membership or registry number of the elector, or if the elector does not know their band Membership or registry number, the date of birth of the elector, and
  - iii. the name, address and telephone number of a witness to the signature of the elector.
- (rr) "Voting Day" means the day on which the polling station will be established for the purpose of taking votes.
- (ss) "Voting Hours" means the time during which voting is permitted on voting day in accordance with Subsection 27.1
- (tt) "Voters List" is the official list of individuals who are qualified to vote which contains their surname, given name and alias if any. This list should show the names of all eligible electors in alphabetical order and not include any personal information about an elector such as date of birth, Band or registration number, or personal address or any other identifying information. The list is prepared by the Seabird Island Membership Clerk.

#### **4. Interpretation**

4.1 In this Code, the following rules of interpretation apply:

- (a) words in the singular include the plural, and words in the plural include the singular;
- (b) words importing female persons include male persons and words importing male persons include female persons;

- (c) if a word or expression is defined, other parts of speech and grammatical forms of the same word or expressions have corresponding meanings;
  - (d) the expression “must” is to be construed as imperative, and the expression “may” is to be construed as permissive;
  - (e) unless the context indicates otherwise, “including” means “including, but not limited to”, and “includes” means “includes, but not limited to”; and
  - (f) a reference to an enactment includes any amendment or replacement of it and every regulation made under it.
- 4.2 If a public notice must be posted under this Code, the public notice is properly posted if written notice is placed in a conspicuous and accessible place for public viewing in the principal administrative offices of Seabird Island and on its website.
- 4.3 If there is an inconsistency between this Election Code and any another enactment of Seabird Island, this Election Code prevails to the extent of the inconsistencies.

## **5. Purpose**

- 5.1 The purpose of this Election Code is to set out the rules, principles and administrative structures that apply to Seabird Island Elections and by which Seabird Island will exercise authority over those elections and those elected.

## **6. Ratification**

- 6.1 This Election Code takes effect when it is ratified by Seabird Island and has Ministerial or delegate approval.

# **PART 2 – ELECTION SYSTEM RULES AND PROCEDURES**

## **7. Election System**

- 7.1 The Seabird Island election system defines the process for selecting the Band Council. Seabird Island elects its Chief and Council based on a democratic system of representation by choice of candidate nominated and elected by a majority vote by secret ballot.
- 7.2 The first election under this Code will be held at least three (3) days in advance of the current Council’s end of term, preferably the third Wednesday of April.
- 7.3 The general election period begins sixty-eight (68) days prior to the Election for Chief and Council to be known as the General Election.

- 7.4 Eligible Voters are responsible for knowing when an election is going to be held and how to participate in it.

## **8. Governing Body**

- 8.1 The first Seabird Island Council to be elected in accordance with this Code shall consist of nine (9) Members [one (1) Chief and eight (8) Councillors].
- 8.2 The Seabird Island Council shall not exceed eight (8) Councillors and one (1) Chief.
- 8.3 The quorum for the Seabird Island Council will be a majority of Council, who currently hold office.
- 8.4 A quorum is the number of Council Members that must be present at a meeting to make its transactions valid.
- 8.5 The roles and responsibilities of Chief and Council are defined in the Seabird Island Governance Manual.

## **9. General Election Every Three Years**

- 9.1 Elections for Chief and Council to be known as the General Election, and the general voting day should be held on the third Wednesday of April in the year of the election and in every 3<sup>rd</sup> year after that unless it is caused to move for some unforeseen circumstance.

## **10. Council Meetings**

- 10.1 The first meeting of the Council shall be held not later than thirty (30) days after its election, on a day, hour and place to be stated in a notice given to each Member of the Council by the Chief, and meetings shall thereafter be held on such days and at such times as may be necessary for the business of the Council or the affairs of the Band.

## **11. Terms of Office**

- 11.1 The Chief and Councillors shall hold office for a three (3) year term and subject to any vacancy arising from this Code. The term of office commences on April the 23<sup>rd</sup> of an election year and ends three (3) years later at midnight on April 22<sup>nd</sup> of that year.
- 11.2 In the case of a replacement of a Council Member, according to Section 16, shall hold office for the remainder of the original term of the Council Member whom he or she is selected to replace.
- 11.3 In the event that a successful appeal results in a new general election, the term of the newly elected Council shall commence on the day following the new General Election

and expire on the date the original election term was to end.

## **12. Eligibility for Office**

12.1 To hold the position of Chief or Councillor for Seabird Island, a person must:

- (a) be a Seabird Island Member;
- (b) be at least eighteen (18) years of age on the date of the election;
- (c) hand in a completed "Candidate Nomination Package" to the Electoral Officer and is verified by the Election Officer as complete by the end of the nomination period;
- (d) provide to the Electoral Officer, prior to the end of the nomination period, a written statement saying you have read and understood the Seabird Island Governance Manual and Seabird Island Election Code;
  - i. It is the responsibility of a nominee to obtain copies of the Seabird Island Governance Manual and Election Code
- (e) be able to attend all the mandatory Council and community meetings or provide a valid reason for absence in accordance with the Seabird Island Governance Manual;
- (f) not be a candidate for both the position of Chief and the position of Councillor at the same election;
- (g) be in good financial standing with the Band and have his or her financial dealings with the Band up to date and have no debts with the Band due to deliberately refusing to pay monies owed;
- (h) swear the Oath of Office prior to taking office;
- (i) have not been disqualified from voting, being nominated, being elected, or holding office on Council; and
- (j) not be an active employee or contractor of the Band or any of the Band's businesses.

## **13. Eligibility for Elector**

13.1 To be eligible to participate in an election a person must:

- (a) be a Seabird Island Member;



(b) be at least eighteen (18) years of age on the day of the election; and

(c) have not been disqualified from participating in an election.

#### **14. Electoral Officers**

14.1 The Seabird Island Council shall, by a Band Council Resolution (BCR), appoint an Electoral Officer, and a Deputy Electoral Officer to carry out the election procedure.

14.2 The Electoral Officer can provide his or her own Deputy Electoral Officer with the consent of Council.

14.3 The Officers must be appointed by Band Council at least sixty-nine (69) days prior to the election date and be provided a copy of the Seabird Island Election Code and Election Code – Guidelines, Notices and Forms.

14.4 The Band Council Resolution for the appointment of the electoral officer shall contain his full name and address, the date of the election, the type of election which is to be conducted (general election or by-election), as well as any special instructions.

14.5 In the event that the Electoral Officer cannot fulfill the duties of his or her contract, the Deputy Electoral Office shall assume the role of the Electoral Officer and the Council shall appoint a new Deputy Electoral Officer.

14.6 In the absence of a Deputy Electoral Officer, the Council shall appoint a new Deputy Electoral Officer as soon as possible.

14.7 If an electoral officer has not been appointed within the time set out in Subsection 14.3, the electoral officer shall be appointed by the Seabird Island Chief Administration Officer or designate as soon as possible.

14.8 The Deputy Electoral Officer is authorized to carry out the duties of the Electoral Officer when directed to do so by the Electoral Officer or when necessary under this Code.

14.9 The Electoral Officer and the Deputy Electoral Officer shall:

(a) not be a Seabird Island Member;

(b) not be employed by the Band;

(c) have experience in the conduct of elections or have received appropriate training;

(d) ensure that the nomination process and election set out in this Election Code are followed properly and to ensure that the results will be broadly accepted as

legitimate;

- (e) remain neutral and professional in the conduct of the duties of this office, and refrain from providing any preferential treatment or expressing support for or opposition to any candidate;
- (f) not accept anything of value, including but not limited to money, offers of employment, gifts, or travel, in exchange for preferential treatment or access to a public official or non-public information;
- (g) not release confidential election information to unauthorized individuals;
- (h) have the authority to reschedule an election due to inclement weather, a manmade, natural disaster and exceptional circumstances such as a death in the community; and
- (i) submit written acceptance to the Seabird Island Council at least sixty-nine (69) days prior to the election date stating that he or she has read this Election Code and agrees to follow it in the exercising of his or her duties.

## **15. Appeal Board**

- 15.1 For the purpose of resolving election appeals or Recall, the Seabird Island Council shall appoint three (3) persons to the Appeal Board by Band Council Resolution for a term commencing on the day of their appointment and ending on the day the elected council's term ends.
- 15.2 These appointments must be made by Band Council at least sixty-nine (69) days prior to the day the election is held. The names of the Members of the Appeal Board are available from the Band Office.
- 15.3 Council will compensate the Appeal Board when they are required to review an appeal or recall petition.
- 15.4 If a Member or all the Members have not been appointed within the time set out in Subsection 15.2, the Members shall be appointed by the Seabird Island Chief Administrative Officer or designate as soon as possible.
- 15.5 If, for some reason, a Member of the Appeal Board cannot fulfill their duty the Council will, as soon as possible, appoint a replacement who meets the qualifications.
- 15.6 The Appeal Board shall consist of three (3) people who:
  - (a) are not Members of Seabird Island;

- (b) remain neutral in the conduct of their duties;
- (c) are not employed by Seabird Island or any of its businesses;
- (d) are available for the duration of the term of office;
- (e) have experience in the conduct of elections; and
- (f) submit written acceptance to the Seabird Island Council at least sixty-nine (69) days prior to the election date stating they have read this Election Code and agrees to follow it in the exercising of their duty plus act fairly in their decision-making.

15.7 The Appeal Board shall hear all appeals resulting from elections conducted under this Code; including a Council Member's removal from office due to Recall.

15.8 The Appeal Board shall render its judgment based on this Code.

15.9 A decision of the Appeal Board is final, but any party may seek Judicial Review, by the Federal Court of decisions made under this Code.

## **16. Council Vacancies and Replacement**

### **Vacancies**

16.1 A Chief or Councillor position becomes vacant when that person who holds office:

- (a) resigns in writing from the office on his or her accord;
- (b) is determined by the Appeal Board, a Court, Council or the Royal Canadian Mounted Police (RCMP) to have committed:
  - i. an election offence under Sections 37 or 38 of this Code;
  - ii. gross misconduct in connection with Council business;
  - iii. Corrupt practice, gross misconduct, accepting a bribe, dishonesty or malfeasance in connection with the election or Council business.
- (c) has been recalled;
- (d) dies;
- (e) is ineligible to hold a Council position under Section 12 of this Code;
- (f) is convicted of an indictable offence as defined within the Criminal Code of Canada,

but not with regards to exercising or protecting Aboriginal Rights and Title such as Fishing offences;

- (g) fails to swear the prescribed Oath of Office declaration within the time period set out in Subsection 12.1 (h);
- (h) has missed three (3) regular scheduled consecutive Seabird Island Council meetings without the written authorization of Council;
- (i) has become clinically mentally ill or incapacitated to the point where they cannot perform the required duties for a period of more than three (3) months as confirmed by a competent authority;
- (j) a Member of Council, who has information that a breach of any aspect of Sections 16, 37, or 38 has occurred but fails to act to protect the interests of Band and its Members is in breach of this Election Code and may be removed from office; or
- (k) is otherwise unable to fulfill the terms of office.

#### Replacement

- 16.2 Once Council has received a written accusation that one or more of its Members is in breach of any of the Sections 16, 37, or 38; those Members not accused of the breach will start an investigation of the allegations against the said Member(s).
- 16.3 Council will set an initial in-camera meeting to determine if there is sufficient information to potentially meet one or more of the conditions set out in Sections 16, 37 or 38.
- 16.4 The accused will be immediately informed of the allegation against them and will have the opportunity to bring forward information to support his/her position at the initial in-camera meeting.
- 16.5 Despite Subsection 16.1, a Member of Council may seek a leave of absence for up to three (3) months before being required to resign but any such leave and any conditions attached to it must be agreed to by Council in writing.
- 16.6 Removal of the Chief or Councillor occurs when a quorum of Council passes a resolution at a duly convened in-camera meeting declaring that the person(s) that hold(s) office be removed according to this Code. Prior to this decision, the Council's Chair or Co-Chair must:
  - (a) give at least five (5) days' notice of an initial in-camera meeting to all Council Members;



- (b) ensure that all relevant information; including any information submitted by the accused or the Appeal Board be made available to all councillors prior to discussing the validity of the allegation; and
  - (c) ensure that if more than one (1) Council Member is subject to removal that the remaining Members of Council make a determination on the removal or removals.
- 16.7 A written allegation or successful Recall Petition must be received by Council's Chair/Co-chair or another Council Member if the Chair/Co-chair are the accused, outlining the grounds for removal along including any information supporting reason for removal. On receipt of an allegation:
  - (a) the Council shall verify that the written allegation complies with any component of Sections 16, 37 or 38 or determine that the grounds put forth in the allegation are either frivolous in nature or unsubstantiated, and dismiss the petition; or schedule another in-camera council meeting to deal with the allegation and inform the people involved; and
  - (b) if a successful Recall Petition is submitted and it meets the requirement of this Code, the Council is required to pass a resolution declaring that the person named in the petition, be removed from office.
- 16.8 If Council determines that an allegation is not substantiated, the Council shall so inform the person(s) making the allegation in writing and provide reasons within ten (10) business days of the Council meeting date at which the determination was made.
- 16.9 If there is sufficient information to potentially meet one or more of the conditions set out in Sections 16, 37 or 38, all parties involved will be notified by Council within five (5) days of the initial meeting that another special in-camera will take place to hear from all parties involved in the allegation, subject to:
  - (a) this special in-camera meeting will be held at least twenty-five (25) business days after the initial meeting;
  - (b) during this special in-camera meeting, Council will take into consideration all aspects of procedural fairness, and allow everyone involved to make a presentation, which may include the presentation of documents and testimony by witnesses;
  - (c) within fourteen (14) business days of this meeting being held, Council shall:
    - i. rule that the allegation shall be allowed to stand, and declare the Council position of the Member of Council who is the subject of the allegation to be vacant; or

- ii. rule that the allegation cannot be fully substantiated and is dismissed; and
  - iii. Council shall record the decision in the Council minutes along with any reasons and send, by registered mail, a written notice of the ruling along with any reasons, to the person(s) making the allegation and the Council Member who is the subject of the petition or demand for removal.
- 16.10 If the Council position is declared vacant under this Section, the Council may further declare the Chief or Councillor removed from office shall be disqualified from being a candidate in any election as per Section 39.
- 16.11 Any party may seek Judicial Review of the decisions of the Council in a Federal court.
- 16.12 Upon a Councillor position becoming vacant during the term of Council, the candidate for Councillor in the last election with the ninth (9<sup>th</sup>) highest number of votes that was not elected shall be offered the vacant position. If that person cannot accept it, then it shall be offered to the next person with the tenth (10<sup>th</sup>) highest votes on the list and so on:
  - (a) if there is a tie, then the names will be put in a hat or receptacle, and the Election Officer or a Member of the Appeal Board shall blindly draw a name out, and that person is declared the winner.
- 16.13 If the Chief position becomes vacant, the elected Councillors shall choose by an agreed upon process; one person from amongst themselves to be the Acting Chief of the Council for the duration of the term. The selected Councillors position will now be vacant and filled as per Subsection 16.12.
- 16.14 If the Chief position becomes vacant because the person who won was ineligible to run; a By-election will be held using the By-election –Accelerated Election process defined in Section 41.
- 16.15 Only the candidates who originally were nominated are eligible to run in this by-election unless the ineligible person who won had won by acclamation; than any eligible Member may run.
- 16.16 The person who was elected and knowingly was not eligible is responsible for all the costs incurred by Seabird Island for the by-election:
  - (a) within seven (7) days of the by-election, the Chief Administrative Officer shall send a letter to the person who was elected but not eligible, setting out the costs of the by-election and demanding payment; and
  - (b) if the person who was elected but was not eligible does not pay, or make

arrangements with the Chief Administrative Officer to pay, within thirty (30) days of the demand letter, the Chief Administrative Officer may take any or all available steps to recover the debt including pursuing legal remedies and with-holding any distributions or payments that may be made from the Band to the person.

- 16.17 If no Councillor candidate is available from the last voting results and there is more than one (1) year remaining in the term, in the event of a loss of quorum, then a by-election shall be held as using the by-election accelerated election process defined in Section 41.
- 16.18 Upon a Chief or Council position becoming vacant, the Council shall post a notice of the vacancy and how the position was or will be replaced in at least one conspicuous place on the Seabird Island Reserve and the Band's website.

## **17. Voters Lists**

- 17.1 It is the sole responsibility of the eligible Elector to ensure his/her name is on the Voters List.
- 17.2 The Electoral Officer shall obtain a Master Voters List and a Voters List from the Seabird Island Membership Clerk or designate no later than sixty-nine (69) days before the date on which the election is to be held.
- 17.3 At least sixty-one (61) days prior to the election, the Membership Clerk shall post a copy of the Voters List, minus personal information, in a public area of the Band administration area and on the Band's website.
- 17.4 On request by a Member, the Electoral Officer or Deputy Electoral Officer shall confirm whether the name of that person is on the Voters List.
- 17.5 The Membership Clerk or a designate can assist the Electoral Officer and his/her Deputy Electoral Officer with Member's identification during the election process.
- 17.6 Off-reserve Members must:
  - (a) inform the Membership Clerk of their current mailing address to receive an election package; and
  - (b) inform the Membership Clerk in writing as to whether or not they consent to have their name and address released to candidates in the election, for campaigning purposes.
- 17.7 Addresses of electors:
  - (a) at least sixty-one (61) days before the day on which the election is to be held, the



Membership Clerk shall provide the Electoral Officer with the last known addresses as part of the Master List, of all electors who do not reside on the reserve;

- (b) a document shall be considered to have been properly mailed to electors who do not reside on the reserve if it was mailed or delivered to every elector who does not reside on the reserve and for whom an address was provided; and
- (c) a candidate for election as Chief or Councillor may obtain from the Electoral Officer a list of the names of electors and the addresses of any electors who have consented to have their addresses released to the candidates.

17.8 The Electoral Officer shall revise the Voters List if an elector presents evidence from the Membership Clerk that the elector is either on the Band list or is entitled to have his or her name entered on the Band list and will be at least eighteen (18) years of age on election day. The Electoral Officer shall note any and all additions or deletions to the Voters List on the Master Voters List.

17.9 A person may demonstrate that the name of an elector has been omitted from, or incorrectly set out in, the Voters List by presenting to the Electoral Officer evidence from the Band's Membership Clerk that the elector:

- (a) is on the Band list or is entitled to have his or her name entered on the Band list;
- (b) is at least eighteen (18) years of age; and
- (c) is qualified to vote at Band elections.

17.10 A person may demonstrate that the name of a person not qualified to vote has been included in the Voters List by presenting to the Electoral Officer evidence from the Band's Membership Clerk or the Indian Registrar that that person:

- (a) is neither on the Band list nor entitled to have his or her name entered on the Band list;
- (b) is not at least eighteen (18) years of age; or
- (c) is not qualified to vote at Band elections.

## **18. Nomination of Candidates**

18.1 Eligible Band Members who want to run for office must correctly fill out the nomination documents found in the Nomination Packages.



- 18.2 Nomination packages, including the Governance Manual and Election Code, will be available in the second week of January of the election year, at Seabird Island's Band office and on their website.
- 18.3 Off-Reserve Members who want a nomination package mailed to them must contact the Membership Clerk prior to the end of January, in the year of the election.
- 18.4 The period for receiving nominations begins at 9 a.m. on the fiftieth (50<sup>th</sup>) day before the general voting day and ends at 4 p.m. on the fortieth (40<sup>th</sup>) day before the general voting day or:
  - (a) if the first day of the nomination period would otherwise fall on a holiday, the nomination period begins on the next day that is not a holiday;
  - (b) if the last day of the nomination period would otherwise fall on a holiday, the nomination period ends on the last day before that day that is not a holiday.

## **19. Notice of Nomination**

- 19.1 At least 15 days before the nomination period begins, the Election Officer must issue a notice of nomination under this Section in accordance with Section 18. The notice must include the following information:
  - (a) the offices for which candidates are to be elected;
  - (b) the date, time and place at which nominations will be received;
  - (c) how interested persons can obtain information on the requirements and procedures for making a nomination;
  - (d) that any questions regarding filling in the nomination forms or election process are to be directed to the Electoral Officer.
- 19.2 The notice may include any other information the Election Officer considers appropriate.
- 19.3 The Electoral Officer may provide additional notice of the call for nominations to be given to the electorate.
- 19.4 The Membership Clerk shall post a copy of the Notice of Nomination, in a public area of the Band administration area and on the Band's website and confirm done with Electoral Officer.
- 19.5 The Electoral Officer shall prepare and keep a written record of the nomination period.

The record should include:

- (a) the names and addresses of candidates nominated,
- (b) the name of each nominator and seconder,
- (c) the time the nomination period opened and closed,
- (d) information on any rejected nominations,
- (e) information on candidates who declined the nomination or who have withdrawn;  
and
- (f) any other information that may seem relevant to the Electoral Officer.

19.6 On the day following the nomination period, the electoral officer shall have posted in at least one conspicuous place on the reserve, and on the Band's website, a tentative list of candidates, and the offices for which they are nominated.

19.7 The official list of candidates will be posted in the same manner five (5) days after the close of the nomination period.

19.8 The Membership Clerk shall post a copy of the list of Candidates, in a public area of the Band administration area and on the Band's website and confirm done with Electoral Officer.

## **20. Withdrawal of Candidates**

20.1 Any time up to the thirty-six (36) day before the Election date after the close of the nomination period, a candidate may withdraw from the election by delivering a signed withdrawal form to the Electoral Officer.

20.2 All written withdrawals must be signed by at least one witness.

20.3 All candidates who withdraw before the thirty-six (36) day time frame will have their name removed from the ballot.

20.4 All candidates who withdraw after the thirty-six (36) day time period; their name will remain on the ballot.

## **21. Nomination Documents**

21.1 All Nomination Documents can be picked up from the Seabird Island Main Office or downloaded from the Seabird Island website in the second week of January in the year

of an election or get them from the Electoral Officer at least eighteen (18) days prior to the nomination period.

21.2 All nominees must be nominated by two eligible voters; one eligible voter as the nominator and one eligible voter as the seconder.

21.3 A nomination must be made in writing in accordance with this Section.

21.4 A nomination must be signed by the nominators and must include the following information:

- (a) the full name of the individual nominated;
- (b) the usual name of the individual nominated, if this is different from the full name and the individual wishes to have his or her usual name on the ballot instead;
- (c) the residential address of the individual nominated, phone number and email address – if available;
- (d) the position the person is being nominated for;
- (e) the names and residential addresses of the nominators.
- (f) the nominees' phone number and an email address – if available;
- (g) a nomination must be accompanied by the following:
  - i. a signed declaration of each nominator that he or she is qualified as a voter;
  - ii. a signed consent of the individual nominated to the nomination.
- (h) a solemn declaration of the individual nominated that he or she is qualified to be nominated.

## **22. Nomination by filing documents with Seabird Island Records Department or the Electoral Officer**

22.1 The obligation to ensure that nomination documents are received in accordance with this Section rests with the individual nominated.

22.2 Nominees are required to contact the Electoral Officer if they need help filling out the nomination.

22.3 Nomination documents can be delivered to Seabird Island's main office in a sealed

envelope, care of the Records Department, by closing time at the end of the nomination period or to the Electoral Officer.

- 22.4 All nomination documents received by Seabird Island will be stamp dated including the time received and a receipt given to the depositor with a copy retained.
- 22.5 The Records Department will scan all filed nomination papers and create a candidate file.
- 22.6 The Records Department will immediately forward the scanned nomination documents to the Electoral Officer for approval and cc. the candidate for their records.
- 22.7 The Electoral Officer shall review all nomination for completion to determine if they can be accepted and contact the nominees whose documentation is incomplete.
- 22.8 If nomination documents are not accepted for filing because they are defective, they may be completed, corrected or substituted before the end of the nomination period.
- 22.9 Any nominee's whose documents are determined by the Electoral Officer to be incomplete by the end of the nomination period will result in that person being disallowed from being a candidate in that election.
- 22.10 When all the required nomination documents are accepted for filing, the Electoral Officer must inform the nominee that the individual is a candidate in the election.

### **23. Election by Acclamation**

- 23.1 If, after the nomination period is closed, and all the candidates have confirmed or declined their nomination, the number of persons nominated for the position of Chief and or Councillors is less than or equal to the number of positions available for election, the Electoral Officer, shall declare those persons elected.
- 23.2 Where the office of Chief and all offices of Councillor are filled by acclamation:
  - (a) The Electoral Officer shall post in at least one conspicuous place on the Seabird Island reserve, on the Band's website, and mail out to Members off-reserve who have provided their addresses, a notice that sets out the names of the persons who have been acclaimed and states that an election will not be held.
- 23.3 In the event that there are insufficient candidates for the positions available after the nomination period and the decisions of each candidate to confirm or decline their nomination, the Electoral Officer shall arrange another nomination period, of five (5) days, to be held within ten (10) days of the first nomination period to fill the vacant positions.



- 23.4 The Electoral Officer shall post in at least one conspicuous place on the reserve, on the Band's website, and mail out to Members off-reserve who have provided their addresses, a notice advising them of the time and date of the nomination period.

## **24. Notice of Poll**

- 24.1 If the number of confirmed nominations exceeds the number of positions available for election, the Electoral Officer shall declare that an election poll will be held.
- 24.2 The Electoral Officer will announce the date, time and place(s) where the polls will be held and post an Election Notice in a conspicuous place in the Band Office and on the Band's website.
- 24.3 The Electoral Officer must post the Election Notice in conspicuous places on the Seabird Island Reserve and the Band website at least thirty-five (35) days prior to the election. The election notice must also be mailed to off-reserve electors who have provided their addresses or email addresses. The Election Notice must identify:
- (a) the date on which the election will be held;
  - (b) the time at which the polls will open and close;
  - (c) the place the where the poll will be held; and
  - (d) the Electors' list or instructions as to how to get or view a copy of it;
  - (e) the name of the Electoral Officer and Deputy Electoral Officer; their telephone, fax numbers, e-mail addresses, and mailing addresses;
  - (f) the names of the candidates and the position that each is contesting; and
  - (g) the names of those acclaimed, if any.
- 24.4 The Poll will take place no sooner than thirty-nine (39) clear days after the nomination period ends. The poll should be conducted prior to the completion of the previous Council's term.
- 24.5 The Poll will take place on the third (3<sup>rd</sup>) Wednesday of April of the "Election" year, or as soon thereafter as possible.

## **25. Mail-In Ballots**

- 25.1 The Electoral Officer shall prepare separate ballots for Chief and Council, using different

colour paper, setting out:

- (a) the names of confirmed candidates nominated for the election of Chief, in alphabetical order;
- (b) the name of confirmed candidates nominated for the election of Councillors, in alphabetical order.

25.2 Where two or more candidates have the same name, the Electoral Officer shall add to the ballots such additional information as is necessary to distinguish between those candidates.

25.3 Ballots shall be prepared in such a manner as to discourage their duplication by unauthorized persons.

25.4 The Electoral Officer shall cause to be printed a sufficient number of each ballot for the Poll.

25.5 At least thirty-five (35) days before the day on which the election is scheduled to be held, the Electoral Officer shall mail to every elector who does not reside on the reserve and who has provided their up to date mailing address to the Electoral Officer, a package consisting of:

- (a) a ballot(s), initialled on the back by the Electoral Officer;
- (b) an outer, postage-paid return envelope, pre-addressed to the Electoral Officer;
- (c) a second inner envelope marked "Ballot(s)" for insertion of the completed ballot;
- (d) a voter declaration form with an identifying number;
- (e) a letter of instruction regarding voting by Mail-In Ballot;
- (f) a statement identifying the location of the polling places and advising the elector that he or she may vote in person in lieu of voting by Mail-In Ballot; and
- (g) the list of names of any candidates who were acclaimed.

25.6 At the request of an elector who resides on the reserve, the Electoral Officer shall provide a Mail-In package.

25.7 An elector who has not received a Mail-In Ballot package may, not later than ten (10) days prior to the date on which the election is to be held, request a Mail-In Ballot package from the electoral officer.

- 25.8 The Electoral Officer shall indicate on the Voters List that a ballot has been provided to each elector to whom a Mail-In Ballot was mailed or otherwise provided, and keep a record of the date on which, and the addresses to which, each Mail-In Ballot was mailed.
- 25.9 The Electoral Officer shall retain a Mail-Out Control Sheet to track the Mail-In Ballot process and to ensure that each Voter Declaration Accompanying the Mail-In Ballot form is numbered and recorded.
- 25.10 An elector may vote by Mail-In Ballot by:
- (a) marking the ballot by placing an X or other mark in the box opposite the name of the candidate or candidates for whom he or she desires to vote in a manner that clearly indicates the elector's choice, but does not identify the elector;
  - (b) folding the ballot in a manner that conceals the names of the candidates and any marks, but exposes the Electoral Officer's initials on the back;
  - (c) placing the ballot in the inner envelope and sealing that envelope;
  - (d) completing and signing the voter declaration form in the presence of a witness who is at least eighteen (18) years of age;
  - (e) placing the inner envelope and the completed voter declaration form in the outer envelope; and
  - (f) delivering or mailing the Mail-In Ballot to the Elections Officer before the time at which the Poll closes on the day of the election to be valid.
- 25.11 Where an elector is unable to vote in the manner set out in Subsection 25.10, the elector may enlist the assistance of another person to mark the ballot and complete and sign the voter declaration form in accordance with that SubSection.
- 25.12 A witness referred to in Subsection 25.10 (d) shall attest to:
- (a) the fact that the person completing and signing the voter declaration form is the person whose name is set out in the form; or
  - (b) where the elector enlisted the assistance of another person under Subsection 25.11, the fact that the elector is the person whose name is set out in the form and that the ballot was marked according to the directions of the elector.
- 25.13 An elector who inadvertently spoils a Mail-In Ballot may obtain another ballot by returning the spoiled ballot to the Electoral Officer.

- 25.14 An elector who loses a Mail-In Ballot may obtain another ballot by delivering to the Electoral Officer a written affirmation that the elector has lost the Mail-In Ballot, signed by the elector in the presence of the Electoral Officer, a Justice of the Peace, a Notary Public or Commissioner for Oaths.
- 25.15 For requests and replacements under Subsections 25.13 and 25.14, the Electoral Officer shall record the request, the returned ballot and any issuance of a new ballot on the Mail-Out Control Sheet.
- 25.16 Mail-In Ballots that are not received by the Electoral Officer before the time at which the Polls close on the day of the election are void and shall not be counted for the election.
- 25.17 An elector to whom a Mail-In Ballot was mailed or provided can vote in person at a polling station providing he/she brings the Mail-In Ballot and returns it to the Electoral Officer, who shall provide the elector with a regular ballot and record the returned Mail-In Ballot and the name of the elector on the Mail-Out Control Sheet.

## **26. Preparing the Polling Station**

- 26.1 The Electoral Officer shall establish at least one polling station on the Seabird Island Reserve preferably at the Seabird Island Community Gym.
- 26.2 The Electoral Officer shall provide each polling station with sufficient ballot boxes that are capable of being locked or sealed.
- 26.3 In each polling place, the Electoral Officer shall place polling booths in areas that are easily accessible and where the electors can mark their ballots in secrecy without interference. Each polling booth shall be equipped with pencils and instructions for voting.
- 26.4 All polls shall be conducted by secret ballot.
- 26.5 Seabird Island or the Electoral Officer may appoint a security guard(s) to maintain order at the polling place.
- 26.6 The Electoral Officer is responsible for preparing the election ballots. There will be two separate ballots, on a different colour paper, one for the position of Chief, and the other for the position of the Councillors. The Electoral Officer shall ensure that there are sufficient ballots available.



**27. The Election Poll**

- 27.1 The polling station or stations shall be open from 9:00 a.m. to 8:00 p.m.
- 27.2 Prior to the opening of the poll, the Electoral Officer shall call forward, at least, one witness who is an elector to examine the ballot boxes to ensure that each one is empty.
- 27.3 Each ballot box will then be locked or sealed for the duration of the poll. The witness(es) shall sign the ballot box seals.
- 27.4 All Mail-In Ballots shall be left unopened and handled as set out in Section 32.2.

**28. Procedures for Voting**

- 28.1 An elector on the voting list wishing to vote shall present valid photo identification to the Electoral Officer and/or Deputy Electoral Officer. Examples of valid photo identification include a Certificate of Indian Status Card, Driver's License, Passport, etc.
- 28.2 If the elector does not have valid photo identification, in order to be entitled to vote, the elector shall provide a declaration from one other eligible elector attesting to the identity and eligibility of the elector wishing to vote.
- 28.3 Once the Electoral Officer and/or Deputy Electoral Officer is satisfied as to the identity and eligibility of the elector, he/she shall place his/her initials on a ballot for Chief and a ballot for Councillor and give them to the elector.
- 28.4 The Electoral Officer and/or Deputy Electoral Officer shall, once ballots have been given to the elector, draw a line through that elector's name on the Voters List to confirm that the elector has received the ballots.
- 28.5 An elector who inadvertently spoils his or her ballot may obtain another ballot from the Electoral Officer and/or Deputy Electoral Officer, who shall write the word "cancelled" on the spoiled ballot and deposit it into a separate pre-identified envelope.
- 28.6 An elector, who received a ballot and refuses to vote, or who leaves the polling place without returning the ballot, will have been deemed to have forfeited his/her right to vote; when this occurs:
  - (a) the Electoral Officer and/or Deputy Electoral Officer shall mark the word "declined" on the Voters List beside this elector's name.
- 28.7 After marking the ballots, the elector shall fold the ballots in the same manner as they were given and return them to the Electoral Officer and/or Deputy Electoral Officer.

- 28.8 The Electoral Officer and/or Deputy Electoral Officer shall then verify that the ballots are the same ones that were issued to the elector, and the elector shall deposit them into the ballot box.

**29. Voting Integrity**

- 29.1 Voting shall be by secret ballot.
- 29.2 No electronic devices such as cameras, tablets or cell phones shall be allowed in a Polling Booth.
- 29.3 No person shall be allowed to interfere or attempt to interfere with an elector marking his or her ballot.
- 29.4 No person shall be permitted to obtain or attempt to obtain in the polling place any information as to how a person voted.
- 29.5 The Electoral Officer, his or her designate, a security officer shall keep the polling station clear of people loitering.
- 29.6 Only those people appointed as scrutineers may be present to observe the election procedure.
- 29.7 Each candidate shall be entitled to have one Scrutineer in the Polling Station at any time on polling day and during the count of ballots.
- 29.8 A candidate's scrutineer must present a letter of authorization to the electoral officer or the deputy electoral officer, signed by the candidate, in order to be permitted to remain in the polling station.
- 29.9 The scrutineers are subject to all provisions outlined in Subsections 29.3 and 29.4.
- 29.10 There shall be no campaigning or campaign advertisements posted within one hundred (100) meters of the building where the polling station is located. No person or candidate shall, on the day the election is held, at or near the premises of the polling station:
- (a) distribute any election-related printed materials except such materials as may be distributed by the Electoral Officer or Deputy Electoral Officer for the purpose of conducting the election;
  - (b) attempt to interfere with or influence any elector in marking his ballot; or
  - (c) attempt to obtain information as to how an elector is about to vote or has voted.

**30. Special Voting Provisions**

- 30.1 An eligible elector who is home-bound on the Seabird Island Reserve and or otherwise physically unable to attend the polling station may request a Mail-In Ballot from the Electoral Officer not later than ten (10) days prior to the date on which the election is to be held.
- 30.2 The Electoral Officer may assist an elector who is unable to mark his or her ballot because of physical illness or disability.

**31. Closing the Polls**

- 31.1 At precisely 8:00 p.m., the polling place shall be closed.
- (a) the doors shall be locked, and any elector already inside the polling station who has not voted may do so; and
- (b) After the last person has voted; the Electoral Officer or his or her designate shall reopen the doors to allow witnesses, other than scrutineers, to attend and observe the ballot count.

**32. Counting the Ballots**

- 32.1 At the close of the polling station, the Electoral Officer shall appoint witnesses to help record the ballot count and shall issue them tally sheets and a pencil or pen.
- 32.2 The Electoral Officer shall commence the ballot counting procedure by opening each envelope containing a Mail-In Ballot that was received before the close of the polls and, without unfolding the ballot,
- (a) reject a ballot if:
- i. it was not accompanied by a voter declaration form or the voter declaration form is not signed or witnessed;
  - ii. the voter declaration form does not contain a date of birth or a band number that matches the information contained for that elector on the voters list;
  - iii. the name of the elector set out on the voter declaration form is not on the Voters List;
  - iv. the Voters List shows that the elector has already voted; or
- (b) in any other case, place a mark on the Voters List opposite the name of the elector

set out in the voter declaration form and deposit the ballot in the ballot box.

32.3 Immediately after the Mail-In Ballots have been deposited into the ballot box, the Electoral Officer or Deputy Electoral Officer shall, in the presence of at least one witness, examine the ballot papers and,

(a) reject all ballot papers:

- i. that have not been supplied by him or her;
  - ii. by which votes have been given for more candidates than are to be elected;  
or
  - iii. on which anything appears by which the elector can be identified.
- (b) take note of any objection made by a candidate or his/her agent to any ballot paper found in the ballot box and decide any question arising out of the objection, subject to review on recount or appeal;
- (c) number any such objection and place a corresponding number on the back of the ballot paper with the word "allowed" or "disallowed", as the case may be, and place his/her initials;
- (d) from the ballots not rejected or declared void, count the votes for each candidate who has not withdrawn before the close of the polls; and
- (e) prepare and sign a statement of the number of ballots rejected.

32.4 Once the counting of the votes is completed, the Electoral Officer shall immediately declare elected the candidates having the highest number of votes.

32.5 If, after the counting and recounting immediately after the first counting of the ballots, two or more candidates for Chief or the eighth Council position have an equal number of votes, making it impossible to determine the elected candidate, the names of the tied candidates shall be placed on separate equal size pieces of paper and the papers placed in a receptacle.

- (a) the Electoral Officer will then draw as many pieces of paper as there are positions available; and
- (b) the names of the candidates appearing on the papers drawn from the receptacle will be the elected candidates.

32.6 The Electoral Officer shall document the results of the counting of the ballots on the



Election Statement.

- (a) an appointed witness or candidate present shall sign the Election Statement along with the Electoral Officer.

32.7 Within four (4) days after the completion of the counting of the votes, the Electoral Officer shall:

- (a) sign and post, in at least one conspicuous place on the reserve, a statement indicating the number of eligible voters who voted, the number of votes cast for each candidate, and ensure that the results are posted on the Seabird Island website;

- (b) mail or email a copy of the election report to every elector of the Band who does not reside on the reserve and has provided their address; and

- (c) forward a copy of the election report to the Band Administrator.

32.8 The Band Administrator shall notify Indigenous and Northern Affairs Canada the results of the election.

### **33. Disposal of Election Materials**

33.1 The Electoral Officer shall retain all of the ballots and all the election documents in a secure location for sixty (60 days), after which, unless an appeal has been filed, he or she shall give them to the Appeals Board; who retain them in a safe place until the end of their term.

33.2 In the event of an appeal, the ballots and all the election documents should be transferred from the Electoral Officer to the Appeal Board for their consideration.

33.3 A Member of the Appeal Board will then keep the election documents until the end of their term.

### **34. Commencement of Term**

34.1 The term of office of the Chief and each Councillor shall commence on the day after the end of the previous Council's term ends in which the first election is held in accordance with this Election Code and shall expire at midnight in the third (3<sup>rd</sup>) year following the first election held in accordance with this Code.

34.2 Thereafter, the term of office of the Chief and each Councillor shall commence on the day after the end of the previous Council's term in the election year, and shall expire at midnight of the third (3<sup>rd</sup>) year following each General Election.

- 34.3 Before taking office or making any decisions as part of Council, each elected candidate must take an oath during a swearing-in ceremony conducted by the Chief Administrative Officer or designate.

### **35. Chief and Councillor Oath of Office**

- 35.1 A candidate who has been elected Chief or Councillor shall, within fifteen (15) days of the electoral officer's declaration under Subsection 32.4, swear an Oath of Office before, Seabird Island's Chief Administrative Officer or designate for taking oaths.
- 35.2 Where a candidate elected as Chief or Councillor cannot, due to illness or other valid reason, swear the Oath of Office within the time prescribed in Subsection 35.1, he or an elector acting on his behalf may file a petition with the Seabird Island's Chief Administrative Officer for an extension of the time to swear the Oath of Office.
- 35.3 The Chief Administrative Officer receiving a petition under Subsection 35.2 shall determine whether the circumstances justify an extension and shall provide the candidate making the request written notice of the decision, and where applicable, the extension period.
- 35.4 No person elected as Chief or Councillor shall be permitted to assume office until they have sworn and filed, with Seabird Island's Chief Administrative Officer, the Oath of Office required under Subsection 35.1.
- 35.5 Subject to Subsection 35.3, if a person elected as Chief or Councillor fails to file the sworn Oath of Office on or before the specified time period, the Chief Administrative Officer shall declare the office vacant.
- 35.6 The Chief Administrative Officer shall give notice in writing to the elected candidate whose office is declared vacant under Subsection 35.5 and to the elected Chief and Council.
- 35.7 The position shall remain vacant until such time as it can be filled according to Subsections 16.8, 16.9 or 16.10 and 16.11.
- 35.8 Replacements for vacated Chief or Council Members who have not sworn the Oath of Office have fifteen (15) day from time of taking office to do so or follow Subsections 35.2 to 35.7.

## **PART 3 – APPEAL**

### **36. Appeal Procedure**

- 36.1 An elector may submit an appeal in respect of the election if he or she has reason to

believe that:

- (a) there was corrupt or fraudulent practice that may have affected the result of the election;
- (b) there was a violation of the Seabird Island Election Code that might have affected the result of the election; or
- (c) a person nominated to be a candidate in the election was ineligible to be a candidate.

36.2 All appeals shall be submitted in writing to the Appeal Board, no later than thirty (30) days following the day on which the election was held.

36.3 Any appeal must be in writing and set out in an affidavit sworn before a Notary Public or duly appointed Commissioner of Oaths the facts substantiating the grounds for the appeal accompanied by any supporting documentation.

36.4 It is the exclusive responsibility of the appellant to provide the relevant evidence.

36.5 Upon receipt of an appeal, the Appeal Board shall:

- (a) in the case where an appeal is submitted in accordance with Subsections 36.2 and 36.3; forward a copy together with supporting documents by registered mail to the electoral officer and each candidate at the election; or
- (b) in the case where an appeal is not submitted in accordance with Subsections 36.2 and 36.3; inform the appellant(s) in writing that the appeal will not receive further consideration.

36.6 The Appeal Board shall wait until the end of the thirty (30) days period before forwarding a copy of all duly submitted appeal(s), together with all supporting documents to:

- (a) the Electoral Officer;
- (b) each candidate in the election; and
- (c) the Seabird Island Council Members.

36.7 Any person who was a confirmed candidate in the election may, within fourteen (14) days of receipt of the appeal documents, forward to the Appeal Board a written response, together with any supporting documents.

- 36.8 The Appeal Board shall take such steps as are necessary to secure all pertinent facts relating to the appeal, including affidavits. The Appeal Board may if the material that has been filed is not adequate for deciding the validity of the election appeal, conduct such further investigation into the matter as the Board deems necessary.
- 36.9 Within thirty (30) days of receipt of an appeal, the Appeal Board shall render a decision on the validity of the appeal. The Appeal Board shall report the decision to the Electoral Officer, the candidates, and the Seabird Island Council. The decision of the Appeal Board is final, but any party may seek Judicial Review, by the Federal Court, of decisions made by the Appeal Board under this Code.

After review of all of the evidence that the Board has received, the Board shall rule (a) or (b):

(a) that the evidence presented was not sufficient to substantiate that:

- i. there was corrupt or fraudulent practice that may have affected the result of the election;
- ii. there was a violation of the Seabird Island Election Code that might have affected the result of the election; or
- iii. the person nominated to be a candidate in the election was ineligible to be a candidate.

(b) that all evidence and information gathered allows for a determination that:

- i. there was corrupt or fraudulent practice that may have affected the result of the election;
- ii. there was a violation of the Seabird Island Election Code that may have affected the result of the election; or
- iii. the person nominated to be a candidate in the election was ineligible to be a candidate; and
- iv. shall declare that the candidate who was the subject of the appeal shall be removed from elected office and may also declare that the candidate is prohibited from being a candidate in future elections as per Section 39 below.

- 36.10 The Appeal Board may order that the election be set aside, in whole or in part and if required, that another election held for the positions set aside. Any new election shall be a By-election held in accordance with this Code.



36.11 The Appeal Board may also determine if a Council Member should be removed from office and provide that information to Council for their deliberation on the matter.

36.12 The decision of the Appeal Board made pursuant to PART 3 shall be:

- (a) published on the Band's Website; and
- (b) posted in at least one conspicuous place in a public area of the Band Administration Office.

## **PART 4 – OFFENSES and PENALTIES**

### **37. Election Offences**

#### **37.1 Vote Buying**

A person shall not pay, give, lend or acquire inducement for any of the following purposes:

- (a) to incite a person to vote or not to vote;
- (b) to incite a person to vote or not vote for a particular candidate;
- (c) to reward a person for having voted or for not having voted; or
- (d) to incite another person to commit the acts described in Subsections a), b) or c) above.

37.2 A person shall not accept inducement:

- (a) to vote or not to vote; or
- (b) to vote or not to vote for a particular candidate.

37.3 A person shall not advance, agree or promise an inducement with the intent that it is to be used for any of the acts prohibited in this Section.

37.4 A person shall not incite another person to carry out any of the acts prohibited in this Section on his or her behalf.

#### **37.5 Intimidation**

A person shall not use coercion, intimidation, threats or force to: a person must not intimidate another person for any of the following:

- (a) persuade a person to vote or not to vote;
- (b) persuade a person to vote or not to vote for a particular candidate; or
- (c) To punish a person for having voted or not voted for a particular candidate.

37.6 A person may not incite another person to carry out any of the acts prohibited in this Section on his or her behalf.

37.7 The following constitute election offences:

- (a) any of the conduct set out in Subsections 37.1 to 37.6 above;
- (b) casting a vote at an election when not entitled to;
- (c) voting more than once;
- (d) impersonating another person in order to obtain a ballot;
- (e) supplying a ballot to another person without being authorized to do so;
- (f) reproducing or copying a ballot;
- (g) destroying, taking or otherwise interfering with a ballot box or ballots;
- (h) canvassing or soliciting votes within one hundred (100) meters of a polling place at the time the polling place is open;
- (i) falsely or fraudulently signing any document related to an election;
- (j) being present at a polling place other than for the purpose of voting unless authorized to be so under this Code or by the Electoral Officer; and
- (k) impeding or obstructing an election official in the performance of his or her duties.

### **38. Recall Offences**

38.1 Signature offences

An individual must not pay, give, lend or procure an inducement for any of the following purposes:

- (a) to induce an individual to sign a petition or refrain from signing a petition; or
- (b) to reward an individual for having signed a petition or having refrained from signing

a petition.

### 38.2 Intimidation offences

A person shall not use coercion, intimidation, threats or force to:

- (a) to persuade or compel an individual to sign a petition or refrain from signing a petition;
- (b) to punish an individual for having signed a petition or having refrained from signing a petition;
- (c) to impede, prevent or otherwise interfere with an individual's right to sign a petition; or
- (d) compel, persuade or otherwise cause an individual to sign a petition or refrain from signing a petition.

### 38.3 Wrongful Signing

An individual who does any of the following commits an offence:

- (a) signs a petition or votes in an initiative vote when not entitled to do so;
- (b) signs the same petition more than once or votes more than once in the same initiative vote; or
- (c) signs a petition, in the name of another individual, whether the name is of a living or dead individual or a fictitious individual.

### 38.4 Offences in relation to canvassing for signatures

An individual who does any of the following commits an offence:

- (a) canvasses for signatures on a petition when not entitled to do so under this Code;
- (b) contravenes respecting inducement in relation to canvassing for signatures on a petition;
- (c) falsely represents that a document is a petition issued by the Appeals Board or another authority;
- (d) canvasses for signatures on a petition in a time period other than that during which the petition may be signed under this Code; or

- (e) does not comply with any regulations respecting the conduct of individuals who canvass for signatures on petitions.

### **39. Penalties**

39.1 A person who commits any of the acts described in Sections 16, 37 or 38 is guilty of an offence and is liable to:

- (a) a prohibition for being or participating in any or all of the following for a period of no longer than two (2) election terms from the date of the determination of the offence:

- i. holding an elected office of the Seabird Island;
- ii. voting in a Seabird Island election;
- iii. nominating or seconding a candidate in a Seabird Island election;
- iv. participating in the Recall of any candidate or signing a Recall petition; and
- v. having their name recorded on an Ineligibility List until their prohibition period is up.

- (b) The prohibition period commences from the date when the offence was committed.

## **PART 5 – RECALL**

### **40. Recall**

40.1 Recall is a process that enables electors to petition for the removal of a Member of the Council between elections.

40.2 Subject to Section 39 (Penalties), any elector may initiate a Recall campaign at any time that is, at least, twelve (12) months after the most-recent election by providing to the Appeal Board from the most-recent election:

- (a) a statement of intent, naming the Council Member proposed for Recall, and containing no more than two hundred (200) words outlining the reasons for the Recall of the Council Member; and

- (b) a \$50.00 filing fee payable to Seabird Island.



- 40.3 Once a complete and valid statement of intent is submitted to the Appeal Board, it must, within seven (7) days:
- (a) provide a copy to the Council Member being Recalled and the rest of Council; and
  - (b) provide the applicant with the procedures for petitions and the forms to be used to collect signatures.
- 40.4 The package or form provided to the applicant must require the applicant to record the name, address, telephone number and signatures of each elector who signs and to include the signature of the individual canvassing the signatures along with a statement that he or she witnessed each signature.
- 40.5 The proponent then has sixty (60) days from the date that he or she receives the petition package from the Appeal Board to collect signatures from Members and, to succeed, must collect valid signatures from more than 50% of the number of Members who voted in the last election.
- 40.6 An applicant may be helped by volunteers to gather signatures. The volunteers are called "Canvassers", and they must be registered voters and Members of Seabird Island. The use of non-eligible canvassers makes the petitions gathered by them null and void.
- 40.7 The applicant and Canvassers are responsible for insuring that all signatures are by the people who say they are.
- 40.8 If the signatures are false and are knowingly accepted, then both the canvasser and signer are guilty of an offense under Section 38 of this Code.
- 40.9 If the applicant wishes to complete the Recall petition process, he or she must submit, at one time, all of the petition pages containing the signatures to Appeal Board.
- 40.10 The Recall petition period shall end on the earlier of the date when the submission of signatures has been made to the Appeal Board or sixty (60) days from the date the applicant received the petition package or form from the Appeal Board
- 40.11 If the Recall petition is not received by the Appeal Board within the sixty (60) day time limit, it automatically fails.
- 40.12 If the signed petition sheets are submitted within the time limit, the Appeal Board has forty-two (42) days to verify the number of electors who have signed the petition.
- 40.13 Upon submission of a Recall petition to the Appeal Board for review and verification the Appeal Board, with the assistance of the Membership Clerk if necessary, shall:

- (a) confirm to the applicant whether or not the petition is in the required form and contains the required information;
- (b) carry out a preliminary count of signatures, exclude signatures from individuals who did not include their names, address, phone number and other required information, and determine if enough were obtained to meet the number set out in Subsection 40.5;
- (c) if there are sufficient signatures to meet the number set out in Subsection 40.5, verify the names of the petition signers against the Voters List;
- (d) make a determination as to whether the Recall petition was successful or not; and
- (e) notify the applicant, the named Councillor(s) and Council in writing of the result and ensure the result is posted on the Band's web-site and in a conspicuous place on the Reserve.

40.14 If a Recall petition is determined to be successful by the Appeal Board, the Council Member(s) who was the subject of the Recall petition ceases to hold office, and the vacancy shall be filled in accordance with this Code.

40.15 Subject to other provisions of this Code, a Recalled Councillor can run as a candidate in the next by-election or election if they are eligible.

#### **41. By-elections – Accelerated Election Time Frames**

41.1 An accelerated election shall be held in accordance with Sections 18 to 35 but modified to accommodate the shortened time frame of thirty-five (35) days.

41.2 For a by-election under this Code, the Electoral Officer shall be appointed at least thirty-five (35) days before the day on which the by-election is to be held.

41.3 The Election Code and Guidelines, Voters List, Nomination Packages and addresses of electors not residing on the reserve shall be given to the Electoral Officer, at least, thirty (30) days before the day on which the by-election is to be held.

41.4 The Electoral Officer shall post a notice of the nomination period; the start and end times and dates, and a list of names of the electors, and the Electoral Officer's contact information, in at least one conspicuous place on the reserve and on Band's website.

41.5 The notice of the nomination period shall be posted at least thirty (30) days before the day on which the by-election is to be held and, at least, two (2) days before the day on which a nomination period begins.

- 41.6 The nomination period shall be five (5) days and end, at least, twenty-three (23) days before the day on which the election is to be held.
- 41.7 The signed letter of candidate withdrawal must be received by the Electoral Officer no later than twenty-two (22) days before the day on which the election is to be held in order for the candidate's name not to appear on the ballot.
- 41.8 Mail-In Ballot packages shall be mailed to electors not residing on the reserve, at least, twenty-one (21) days before the day on which the election is to be held.

## **PART 6 – AMENDING PROVISIONS**

### **42. Amending Provisions – Regular**

- 42.1 This Election Code can be amended from time to time. Typographical, numerical or grammatical errors can be corrected by Council Resolution at any time without having a referendum.
- 42.2 Council will appoint a review committee after the first election that follows this Code, to review the election regulations and propose amendments if required. The review committee will then be struck whenever there is a need to amend this Election Code as directed by Council or if a successful petition has been submitted.
- 42.3 The review committee shall consist of two Members of Council, the Membership Clerk, a person having experience in the delivery of elections, the Chief Administrative Officer or designate, and four (4) Band Members appointed by Council.
- 42.4 Band Members may also submit proposed amendments in writing to the Chief Administrative Officer, who will pass the amendments to the review committee for consideration, provided that the proposed amendment is accompanied by a petition signed by at least twenty-five (25) eligible voters in support of the amendment. All petitions must be presented at least one (1) year in advance of the next election so that there is time to ratify amendments prior to the next election.
- 42.5 The review committee shall hold open meetings for the examination and discussion of amendments, notice of which must be given at least fourteen (14) days prior to the day on which the meetings will be held.
- 42.6 The committee will ensure that they post meeting notices and the suggested amendments in the Band Office and on the Band's webpage and provide an opportunity for feedback and voting by both on and off reserve, eligible voting Members.
- 42.7 Proposed amendments shall be submitted to a general referendum vote. All referendums will use the same process set out in Part 8 of the Seabird Island Land Code.

42.8 In order for the proposed amendments to be adopted, 60% plus one of the eligible voters who vote in the referendum must vote in favour of the amendment(s).

42.9 No regular amendments will take place less than one hundred (100) days prior to a Seabird Island election.

#### **43. Extraordinary Meetings – to Amend**

43.1 In the event that an issue arises that is not addressed in this Election Code or if the Amending Provisions - Regular make it unfeasible to amend the Election Code, the Seabird Island Council may, with thirty (30) days' notice, call an extraordinary meeting of the Seabird Island Membership.

43.2 Notice for an extraordinary meeting must:

- (a) include the date, time and location of the meeting;
- (b) be posted on the Band's web-site and in a conspicuous location on the Reserve;
- (c) be mailed out to all Band Members for which the Membership Clerk has an up to date address;
- (d) include the proposed amendment to the Election Code; and
- (e) specify the intent to have a vote on the proposed amendment at the end of the meeting.

43.3 A minimum 25% plus one of the number of eligible electors must be present at such meeting in order to have a quorum for any vote concerning resolutions to the issues to be carried.

43.4 The proposed amendment(s) to this Election Code will be approved if a majority of the Members (50% plus one) in attendance vote in favour of the amendment(s).

### **PART 7 – OTHER MATTERS**

#### **44. Council May Delegate**

44.1 Council is responsible for the Administration of this Election Code.

44.2 Subject to Subsections 44.3 and 44.4, Council may delegate its duties, responsibilities and power under this Election Code to such person(s) or Committee(s) as it deems appropriate.



44.3 Council may not delegate its law-making powers.

44.4 Where this Election Code provides that Council shall by resolution carry out a duty or task, or exercise power, Council may not delegate such duty, task or responsibility to exercise such power.

#### **45. Register of Eligible Voters and Election Results**

45.1 Seabird Island shall maintain at the Administrative offices of Seabird Island an up to date list of eligible voters and all election results.

#### **46. Indemnification**

46.1 Seabird Island will indemnify and save harmless all Council Members, Appeal Boards, Electoral Officers, employees, officers and contractors of Seabird Island from and against any and all liability, damages, costs (including reasonable counsel fees and disbursements), charges and expenses arising out of or related to any act or omission done or permitted by them to be done in connection with their duties in administering of an Election or the governing of Seabird Island, save in the case of fraud, wilful misconduct or gross negligence.

#### **47. Insurance**

47.1 Seabird Island may purchase and pay for such insurance as may be available at a reasonable cost, as determined by Council, to cover the liability of the Council Members, Appeal Boards, Electoral Officers, employees, officers and contractors of Seabird Island to which the indemnity provided for in Subsection 46.1 applies.

#### **48. Liability**

48.1 Seabird Island or its Members shall not be liable for any claims, losses or damages resulting from the deletion or addition of an individual's name to the Seabird Island Voters List.

#### **49. Severability**

49.1 If any part of these election regulations is declared invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the validity or enforceability of any other part of this Election Code.

#### **50. Regulations**

50.1 Seabird Island Chief and Council may make or amend Regulations in relation to the:

- (a) remuneration of Electoral Officers, Deputy Electoral Officers, Appeal Board Members, and any other electoral staff, officials or contractors;
- (b) confirming forms to be used in any process relating to elections;
- (c) nomination procedures;
- (d) preliminary procedures to elections;
- (e) mail-in voting procedures;
- (f) counting of votes procedures;
- (g) recall procedures; and
- (h) complaint and appeal procedures.

50.2 Any Regulations shall not supersede, contradict or in any way change this Code.

50.3 In the event of a conflict between the Regulations and this Code, this Code shall prevail.

## **51. Effective date of Election Code**

51.1 The *Seabird Island Election Code* will only come into force when the Ministerial Order (MO) is registered by the Privy Council Office (PCO). Once the MO is issued by the PCO, future elections will then be held in accordance with the *Seabird Island Election Code*.